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FILED  
Clerk  
District Court

APR 19 2006

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

*Attorney for:* Defendants  
Commonwealth Development Authority  
and Maria Lourdes S. Ada

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN MARIANA ISLANDS

ROSARIO DLG. KUMAGAI,  
  
Plaintiff,

Civil Action No. 05-00037

vs.

**PAMELA BROWN**, a.k.a. **PAMELA BROWN BLACKBURN**, personally and in her official capacity as the Attorney General for the Commonwealth of the Northern Mariana Islands; **FERMIN M. ATALIG**, personally and in his official capacity as the Secretary of Finance; **COMMONWEALTH OF THE NORTHERN MARIANAS ISLANDS**; **MARIA LOURDES SEMAN ADA**, personally and in her official capacity as the Executive Director for the Commonwealth Development Authority; **COMMONWEALTH DEVELOPMENT AUTHORITY**; **BANK OF GUAM**; and **JOHN DOES ONE through TEN**,

**COMMONWEALTH  
DEVELOPMENT AUTHORITY  
AND MARIA LOURDES S. ADA'S  
REPLY TO PLAINTIFF'S  
OPPOSITION /  
CERTIFICATE OF SERVICE**

Defendants.

**Date:** May 18, 2006  
**Time:** 9:00 a.m.  
**Judge:** Hon. Alex R. Munson

NOW COMES the Commonwealth Development Authority ("CDA") and Maria Lourdes S. Ada ("Ada") and hereby files their reply brief to the opposition filed by plaintiff to the question of whether or not CDA is an "arm of the state" for purposes of determining whether CDA is entitled to immunity against the § 1983 claims in this case.

**ORIGINAL**

**I. Any Money Judgment Against CDA Would Have To Be Satisfied Out Of CNMI Funds**

Plaintiff's claim that CDA has ninety-eight percent (98%) of its total assets available to pay for any judgment is a gross misconception. The CDA statute is clear that it can only pay its administrative expenses out of funds available under 4 CMC § 10401(b)(1) and (3). See 4 CMC § 10402(f). All other funds of the authority are not available for administrative expenditure by CDA. More importantly, the majority of the funds which are presently available to the authority for administrative expenses are those found in 4 CMC § 10401(b)(1), which are restricted to "...any earned interest, surplus or net profit from authority operations and activities." Funds available pursuant to subsection (3) of § 10401(b), i.e., any interest or fees due or received from items transferred to CDA from the Economic Development Loan Fund pursuant to 4 CMC § 10407 are, by its very nature, a dwindling source of funds from which CDA can draw down for its administrative expenses. In addition, and contrary to plaintiff's contention, any amount borrowed pursuant to 4 CMC § 10401(b)(2) cannot be used by CDA for its administrative expenses. See 4 CMC § 10402(f).

Unlike the Commonwealth Ports Authority, CDA does not have all of its assets at its disposal for the payment of a judgment rendered against it. With the exception of funds which may be provided by the Marianas Public Land Trust (MPLT) pursuant to N.M.I. Const. Art. XI, § 6(c), all other funds of CDA pursuant to § 10401(a) are federal funds which are restricted under the Covenant (and subsequent United States financial assistance agreements) to capital development and economic development use. Even the funds provided by MPLT under § 10401(a)(2) are to be commingled with federal economic development loan funds and used specifically for economic development loans. N.M.I. Const. Art. XI (6)(c). Because these funds are restricted as to their use, even the CNMI legislature could not appropriate such funds for the payment of a judgment against CDA. Such payment would have to be appropriated from the general treasury of the Commonwealth thereby having the potential to greatly affect the financial status of the entire

1 Commonwealth and its people.

2 **II. CDA's Central Government Functions Are Vital To The Economy**  
 3 **Of The CNMI**

4 Plaintiff, on pages 4 and 5 of her opposition memorandum, attempts to reduce  
 5 the importance of CDA's role in the central government of the CNMI. The plaintiff  
 6 contends that the CNMI government would not be compelled to protect CDA by  
 7 appropriating money to pay a judgment against CDA because, unlike CPA, CDA's role in  
 8 the island's economy is minimal. In support of its argument, plaintiff cites to 4 CMC §  
 9 10203(a)(13)(14) and (15) and completely ignores the following important powers of CDA  
 10 under that section:

11 (7) To make and issue bonds, notes or other obligations in furtherance of the  
 12 purposes of this division including, but not limited to, funding capital  
 13 improvement projects of the Commonwealth for sewers, power, water, roads,  
 health facilities, air and sea ports, and parks and recreation facilities;

14 (8) To make loans to any autonomous public agency for use in any project that  
 in the judgment of the authority will further the purposes of the division;

15 (9) To guarantee the obligations of the Commonwealth or its autonomous  
 16 public agencies, incurred to fund any project that in the judgment of the  
 authority to be consistent with this division;

17 ---

18 (18) To pledge the full faith and credit of the Commonwealth.

19 *Id.*

20 In addition to the foregoing, CDA has numerous other powers that it performs  
 21 for the CNMI government. See *Id.* (19) through (34). Suffice it to say, however, that CDA  
 22 is the financial and investment arm of the government. It has been previously argued that  
 23 it approves all borrowing by the Commonwealth government and its agencies and is  
 24 authorized to pledge the full faith and credit of the Commonwealth and to waive its  
 25 sovereign immunity. Presently, there are several outstanding bond issues that CDA has  
 26 pledged the full faith and credit of the Commonwealth (and waived its sovereign immunity)  
 27 in order to render such issues marketable. One such bond issue is the \$40M general  
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1 obligation bond which raised the proceeds of the MPLA Land Compensation Fund. If a  
2 judgment rendered against CDA were to have a detrimental effect on its viability as the  
3 financial and investment arm of the Commonwealth, the CNMI's entire credit rating would  
4 be adversely affected. In addition, all its financial relationships with the private sector  
5 through its economic development loans and guarantees would be similarly affected. This  
6 comports with the rationale of the court in *Aguon v. Commonwealth Ports Authority*, 316  
7 F.3d 899 (9<sup>th</sup> Cir. 2003) because the functions of the air and sea ports in the CNMI are also  
8 essential to the private sector economy.

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10 **III. Unlike CPA, Only The Third Factor Of The *Mitchell* Case Works Against CDA**

11 In CDA's opening brief, CDA and Ada acknowledged that only the  
12 third factor in *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198 (9<sup>th</sup> Cir.  
13 1988) did not favor a finding that CDA is an arm of the government.

14 With respect to the fourth factor, CDA is unlike CPA because it does not have the  
15 power of eminent domain. However, as pointed out in the opening brief, CDA only holds  
16 interests in real property or personal property in connection with its activities. 4 CMC §  
17 10203(a)(5). Such activities are limited to holding an interest as a mortgagee and  
18 subsequently in foreclosure proceedings it can acquire title to the foreclosed property as a last  
19 resort, but only to protect its outstanding loans and investments. See 4 CMC § 10203(a)(15).

20 Finally, with the fifth factor, CDA's board of directors are also subject to the same  
21 appointment and confirmation procedures by the governor and legislature, respectively, as  
22 the CPA board. What sets out the difference and tips the balance between CPA and CDA  
23 are the three points previously pointed out. First, CDA has the power to pledge the full faith  
24 and credit of the Commonwealth. Secondly, CDA can waive the sovereign immunity of the  
25 Commonwealth. And lastly, CDA has the final authority to approve all public borrowing by  
26 the Commonwealth and all its instrumentalities and agencies.

1 Dated this 21 day of April, 2006.

2 Respectfully Submitted By:

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4 **LAW OFFICES OF VICENTE T. SALAS**

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8 VICENTE T. SALAS, CNMI Bar #F0126  
9 Attorney for the Defendants Commonwealth  
10 Development Authority and Maria Lourdes  
11 S. Ada, personally and in her official capacity  
12 as the Executive Director for the  
13 Commonwealth Development Authority  
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**CERTIFICATE OF SERVICE**

I, VICENTE T. SALAS, hereby certify that on this 19 day of April, 2006, I have caused true and correct copies of the foregoing ***Commonwealth Development Authority and Maria Lourdes S. Ada's Reply to Plaintiff's Opposition and Certificate of Service*** to be served upon the following counsel via personal delivery:


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Dated: April 19, 2006.

  
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